



LAW MEMO

Rethinking Board Orientation Manuals

Most nonprofit management books recommend that new board members be given a package of orientation materials before they attend their first meeting. These materials, which are usually assembled in a three-ring binder, typically include the organization's by-laws, mission statement, history, strategic plan, budget, recent financial statements, program descriptions, policy statements, meeting minutes, press clippings, and, of course, a board roster.

Some board manuals also contain a board "job description" outlining expectations such as serving on a committee, buying a subscription, or

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participating in fund raising efforts. While these materials are useful, they provide little guidance on how to behave, so new members

are often bewildered and uncomfortable.

In organizations, the rules or standards that are considered appropriate (or not) and their underlying meaning are called group norms. When they are ambiguous, arbitrary or restrictive, boards have difficulty achieving full participation, promoting mutual understanding, developing inclusive solutions to problems, and sharing governance responsibilities.

This issue of *Arts Law Memo* explains why group norms are both a source of confusion and order. It also provides a list of ground rules that can

provide framework for more effective board service. Finally, it provides ten financial questions boards members should ask in order to meet their fiduciary responsibilities.

We encourage you to discuss these materials, adapt them to suit your organization's values and needs then add them to your board orientation manual.

WHAT ARE GROUP NORMS?

Do your board meetings start on time? Do members openly question the chair's leadership? Do they observe the common courtesies of conversation and avoid disruptive side conversations? Do they present a united front to nongroup members? Does your organization follow Robert's Rules of Order? Are important decisions made following lively debates? Or are they made before the meeting then simply rubber-stamped by the full board?

Small groups and organizations are much like cultures. Each develops its own code of behavior for what members should and should not do under certain circumstances.

According to Rodney Napier and Matti Gershenfeld, authors of *Groups: Theory and Practice*, "it is important to understand that norms are not only rules about behavior in the group but also ideas about patterns of behavior. Rarely can the ideas be inferred directly from behavior; rather they must be learned."

For example, a new board member may learn not to bring up the projected deficit or to overtly state that the fund raising goal is unrealistic.

In another instance, the new board member might come to understand that publicly criticizing a show produced by the organization is frowned upon by the board.

"Thus through experience," Napier and Gershenfeld explain, the board member "learns that the significance of a particular act is not the act itself, but the meaning the group gives to it."

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VLAA helps artists and arts organizations solve and avoid legal and accounting problems by:

- Making referrals to lawyers and accountants;
- Mediating arts-related disputes;
- Publishing *Arts Law Memo* and concise how-to guides;
- Sponsoring seminars and public forums;
- Arranging for guest speakers;
- Maintaining a reference library;
- Supplying model contracts and other arts law and business materials;
- Facilitating meetings;
- Conducting and disseminating research on issues affecting the arts;
- Contributing articles to publications;
- Collaborating on arts advocacy initiatives;
- Matching volunteers with organizations seeking board members; and
- Providing access to the national VLA network.

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This publication is distributed with the understanding that VLAA is not engaged in rendering legal or accounting counsel. We urge you to seek professional services to address your specific needs.

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Ground Rules for Effective Groups

Group norms are often unspoken and not discussed within the group or explained to new members. This often results in misunderstandings that can be reduced when group members agree to follow a set of ground rules. These 16 rules, outlined by Roger M. Schwarz in *The Skilled Facilitator*, should be adapted by your board based on its norms (and need for changing those norms).

1. **Test assumptions and inferences.** This allows the group to get the information it needs to make informed decisions.
2. **Share all relevant information.** This includes sharing information that does not support one's point of view.
3. **Focus on interests, not positions.** This principle is the foundation of *Getting to Yes*, the best-selling book on negotiation skills. Interests are underlying needs and concerns that are often not revealed when someone defends a position.
4. **Be specific—use examples.** This helps the members of the group to independently determine the validity of a particular statement.
5. **Agree on what important words mean.** This saves time, and more importantly, helps avoid confusion.
6. **Explain the reasons behind one's statements, questions, and actions.** This adds the all important "why" to sharing relevant information and identifying interests.
7. **Disagree openly with any member of the group.** Although group members are sometimes reluctant to challenge each other, constructive debate is an effective method for ensuring thoughtful discussion.
8. **Make statements, then invite questions and comments.** This encourages discussion and minimizes tedious monologues.
9. **Jointly design ways to test disagreements and solutions.** This makes members invested in their decisions.
10. **Discuss undiscussable issues.** Silence is not golden when discussion of critical issues that could result in negative consequences is avoided.
11. **Keep the discussion focused.** This means staying on track while discussing an issue until all members fully understand its implications.
12. **Do not take cheap shots or otherwise distract the group.** When everyone's participation is valued, members can not afford to insult each other or conduct side conversations.
13. **All members are expected to participate in all phases of the process.** This is one of the best way to exploit the benefits of participatory decision-making—better thinking and better buy-in.
14. **Exchange relevant information with nongroup members.** Groups often depend on information from nongroup members. Conversely, to maintain trust, some information should not be shared with nongroup members.
15. **Make decisions by consensus.** This method is most appropriate when the full group must support the decision in order for it to be implemented effectively.
16. **Do self-critiques.** This is the best way to learn from mistakes and celebrate successes. Of course, the group needs shared assumptions about criteria for measuring results.

TYPES OF NORMS VARY

Formal Norms. These are codified in your by-laws, which probably outline the duties and authority of officers and committees. They may also include personnel, conflict of interest, freedom of expression, and other policies.

But sometimes these formal rules are ignored and a new set of implicit rules is, therefore, established. The result can be confusing because there is no similarity between what is "official" and what is done in practice.

Explicitly Stated Norms. These are easily recognized or verbalized, such as the statement: "Everyone arrives for the 5:00 p.m. meeting by 5:15 p.m." But again, the explicitly stated norms may not be the actual norms.

Nonexplicit Norms. These informal norms are most often understood when they are violated. That leaves the errant member four choices: to conform, to change the norms, to remain deviant, or to leave the group.

CHANGING GROUP NORMS

Group norms are basically conservative mechanisms that tend to preserve the status quo and create security, especially for those with high status within the organization.

"In working with groups," Napier and Gershenfeld argue, "the question with regard to norms is not whether they are good or bad. Rather the questions are:

- Which norms help the group achieve its purposes, and which are harmful or inhibiting?
- Which norms are compatible with the goals and values of the group and under what conditions?
- How can the norms be changed or reconsidered to permit the group to achieve its purposes under conditions of maximizing its resources?"

THE GREATER CONTEXT

Although they are often unstated, group norms guide problem-solving, decision-making, how conflict should be handled, and many other processes. Together with its core values, clear mission, and shared vision, norms give a nonprofit organization its fundamental structure and direction. That means they are far too important to ignore.

Ten Financial Questions Board Members Should Ask

Traditionally, boards focus on policy matters and leave the day-to-day management of their organization to staff. But to fulfill their fiduciary responsibilities, they should be encouraged to ask the critical questions that will allow them to assess the organization's financial health.

The goal is, of course, for the board to monitor without micro-managing.

1. Do we have a sound financial plan ? Realistic plans are based on experience and reasonable expectations. They are consistent with the organization's strategic plan and are presented in an understandable format.

2. Are our key sources of income rising or falling? Although they dream of a stable environment, year after year, arts organizations piece together their budgets from a variety of earned and "unearned" sources. When public subsidies fluctuate and private grants become more difficult to obtain, the pressure to reach new audiences and generate additional earned income increases.

3. Are our key expenses, especially salaries and benefits, under control? Salaries and benefits (small as they may be) generally are the largest line item under expenses, so they are often the first place to look when overall expenditures rise more quickly than income.

4. Do we have sufficient reserves? Experts say that when organizations have one year's operating expenses "in reserve" they are in a strong financial position. Few arts organizations are in this enviable position, but many set aside some money every year in a "rainy day" fund.

5. Is our cash flow projected to be adequate? The availability of sufficient cash can be a critical problem for major cultural institutions and emerging arts organizations alike. Preparing cash-flow projections may help your organization cope with this chronic concern.

6. Where are we compared to budget? Budgets are important planning tools that help assure effective management of financial resources. By monitoring variances from anticipated income and expenses, board members can measure the organization's financial performance—both successes and failures.

7. Is our staff satisfied and productive? The arts are labor intensive enterprises that generally rely on the energies and talents of highly motivated people. Too often they are overwhelmed and under paid. Enough said.

8. Have we assessed our risks and taken adequate measures to manage them? Risk management is more than buying insurance. It includes identifying, evaluating, and controlling risks as well as monitoring risk management strategies and revising them when necessary.

9. Are we filing on a timely basis all the reporting documents we are supposed to be filing with the government and grantmakers? The fines and penalties for not filing your 990 form with the IRS on time or failing to make required deposits of withheld payroll taxes are severe. Future funding can be jeopardized when grantmakers do not receive invoices and final reports on a timely basis.

10. Are we fulfilling our tax-exempt purpose as granted by the IRS? Arts organizations rarely stray far away from their missions. Instead their challenges include avoiding self-censorship, resisting quick fixes that compromise artistic integrity (especially when there are signs of financial trouble), and remaining open to change.

These questions were freely adapted from a 32-page booklet published by the National Center for Nonprofit Boards entitled *The Financial Responsibilities of Nonprofit Boards* by Andrew S. Lang.

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Resources

VLAA GUIDE TO BOARD DUTIES & LIABILITIES

This concise guide defines the legal duties of care and loyalty, summarizes the Missouri and Illinois statutes that provide limited immunity from liability, explains indemnification, and discusses the advantages and disadvantages of purchasing D&O insurance. Call 314/652-2410 to request your free copy.

NOTEWORTHY PUBLICATIONS

- Eadie, Douglas C. *Changing by Design*
- Fisher, Roger F., William Ury and Bruce Patton. *Getting to Yes*
- Kaner, Sam. *Facilitator's Guide to Participatory Decision-Making*
- Kurtz, Daniel L. *How to Manage Conflicts of Interest* (National Center for Nonprofit Boards)
- Lang, Andrew S. *The Financial Responsibilities of Nonprofit Boards* (National Center for Nonprofit Boards)
- Napier, Rodney and Matti Gershenfeld. *Groups: Theory & Experience*
- Robert herman & Associates. *The Jossey-Bass Handbook on Nonprofit Leadership and Management*
- Schein, E.H. *Organizational Culture and Leadership*
- Schwarz, Roger M. *The Skilled Facilitator*

• These publications (and many other books on arts law and business practices) are available at the St. Louis Volunteer Lawyers and Accountants for the Arts library located within the Regional Arts Commission office, 3540 Washington, in Grand Center. The expansion of VLAA's library and promotion of its use is made possible by a generous grant from the Gateway Foundation.